

AGREEMENT

THIS AGREEMENT, made and entered into on the Seventh day of July 2020, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the COMMONWEALTH OF KENTUCKY created pursuant to KRS Chapter 67A ("Lexington"), 200 East Main Street, Lexington, Kentucky 40507, and **COMMERCE LEXINGTON, INC.**, a Kentucky corporation, ("Commerce") with offices located at 330 East Main Street, Lexington, Kentucky.

WITNESSETH:

WHEREAS, the Urban County Council budgeted \$2,500,000 in the Lexington-Fayette Urban County Government's Fiscal Year 2021 Budget for the creation of a Local Small Business Economic Stimulus Program (the "Program"); and

WHEREAS, the Lexington-Fayette Urban County Government has determined that the Program fulfills a public purpose by providing for economic development and recovery from the current public health emergency; and

WHEREAS, the Urban County Government wishes to partner with Commerce Lexington in order to administer the Program in a timely and efficient manner.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. Commerce, by and through its Access Loan Program, will administer the \$2,500,000 Local Small Business Economic Stimulus Program ("Stimulus Funds") in compliance with the criteria provided in Resolution No. 359-2020 and as further described

in the attached Exhibit "A" Scope of Work on behalf of Lexington. Administration includes the receipt, review, and approval of applications; the entering into grant agreements with approved applicants that is substantially in the same form as Exhibit "B", which is attached hereto and incorporated herein by reference; the distributing of funds pursuant to said grant agreements; and compliance monitoring (the "Services"). The funds will be deposited at Traditional Bank.

2. In consideration for the Services, Commerce will retain an administrative fee of five percent (5%) from the Stimulus Funds granted, not to exceed one hundred and twenty five thousand dollars (\$125,000) In no event shall the amount retained under this Section and the amount granted to businesses by Commerce under this Program collectively be greater than \$2,500,000. 3. Commerce will provide Lexington with regular progress updates on the Stimulus Funds granted pursuant to this Agreement on at least a monthly basis and will appear before the Urban County Council or any of its committees to provide progress updates upon Lexington's reasonable request.

4. Commerce will keep and make available to Lexington any records related to this Agreement such as are necessary to support its performance thereof. Books of accounts shall be kept by Commerce and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of Commerce related to this Agreement be made available to Lexington upon request.

5. Either party may terminate this Agreement for a material breach in performance after placing the breaching party with written notice of the breach and the opportunity to cure. The period of time to cure the breach shall be reasonable, but in all instances must be at least thirty (30) days.

6. Commerce shall keep itself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of this Agreement, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not such laws, ordinances or regulations are mentioned herein, and shall indemnify Lexington, its officers, agents and employees against any claim or liability arising from and based on Commerce's violation of any such laws, ordinances or regulations.

7. In no event shall the parties be construed, held or become in any way for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.

8. Commerce shall provide equal opportunity in employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation or gender identity, or handicap, shall promote equal employment through a positive, continuing program of equal employment, and shall cause any agency receiving funds provided pursuant to this Agreement to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

9. Commerce represents that it has adopted a written sexual harassment policy, which shall, at a minimum, contain a statement of current law; a list of prohibited behaviors; a complaint process; and a procedure which provides for a confidential investigation of all complaints.

10. Lexington may designate such persons as may be necessary to monitor and evaluate the services rendered hereunder by Commerce. Lexington, its agents and

employees, shall, at all times, have unrestricted access to all places where or in which the services required hereunder are being carried on and conducted. Inspection and monitoring of the work by these authorities shall in no manner be presumed to relieve in any degree the responsibility or obligations of Commerce.

11. Commerce agrees that all revenue and expenditures shall be audited at least annually by independent certified public accountants who shall express an opinion as to whether or not revenue and expenditures during the year audited have conformed to state and local law and regulation. A copy of this audit shall be submitted to the Government within ten (10) days of completion.

12. Notice – Any written notice required by the Agreement shall be delivered by certified mail, return receipt requested, to the following:

For Organization: Commerce Lexington
330 East Main Street
Lexington, Kentucky 40507
Attn: Bob Quick, President & Chief Executive Officer (or as otherwise designated in writing)

For Government: Lexington-Fayette Urban County Gov.
200 East Main Street
Lexington, Kentucky 40507
Attn: Kevin Atkins, Chief Development Officer

13. Neither party may assign any of its rights and duties under this MOA without the prior written consent of the other party.

14. This Agreement does not create a contractual relationship with or right of action in favor of a third party against either Commerce or Lexington.

15. If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken.

16. This Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in Fayette County, Kentucky.

17. By mutual agreement, the parties to this Agreement may, from time to time, make written changes to any provision hereof. Commerce acknowledges that Lexington may make a material change only upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of its Mayor.

18. This Agreement shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose. This Agreement shall replace any previous agreement between the parties on the same subject matter.

19. The waiver by either party of any breach of any provision of this Agreement shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision of this Agreement.

IN WITNESS WHEREOF, the parties certify that they have been duly authorized to execute, deliver and perform this Agreement, and have executed it as of the date first herein written.

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

BY: 
LINDA GORTON

ATTEST:

Abigail Allan Mackenzie Sommers

Deputy URBAN COUNTY COUNCIL CLERK

COMMERCE LEXINGTON, INC.

BY:

[Signature]

RAY DANIELS, BOARD CHAIR

COMMONWEALTH OF KENTUCKY)

COUNTY OF FAYETTE)

The Agreement was subscribed, sworn to and acknowledged before me by

Ray Daniels, as Board Chair of Commerce Lexington, Inc., on this the 7 day of July, 2020.

My commission expires: 1-27-2021



Kathleen Vandegriff

NOTARY PUBLIC, STATE AT LARGE, KY

[Faint signature]

EXHIBIT "A"

Lexington/Fayette Urban County Government
Addendum for Services
Commerce Lexington

Scope of Work

1. Manage and administer the Lexington Small Business Economic Stimulus Program
2. Determine if the business meets the basic requirements established by the Lexington-Fayette Urban County Council to receive program funding.
3. Access Loan Program will review applications and make determination on funding level based on application and supplemental information provided by applicant.
4. Enter into grant agreements with approved applicants at funding levels determined by Commerce Lexington and disperse funds pursuant to said agreements.
5. Collect report information by June 30, 2021 to show current employment and payroll benchmarked against employment on January 1, 2020 and March 8, 2020, December 31, 2020 and June 30, 2021

EXHIBIT "B"

Lexington/Fayette Urban County Government
Addendum for Services
Commerce Lexington

Grant Agreement